

PTO/SB/21 (09-04)

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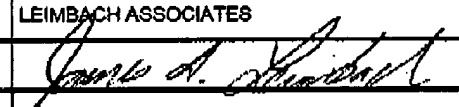
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/854,393	
	Filing Date	05/11/2001	
	First Named Inventor	Horst Rumpf	
	Art Unit	2655	
	Examiner Name	Jorge L. C. Ortiz	
Total Number of Pages In This Submission	4	Attorney Docket Number	DE 000078

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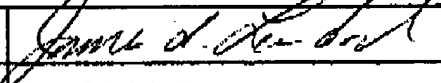
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Remarks Enclosed is a petition that seeks supervisory review. Therefore, no petition fee is due. If it is determined that a petition fee is due, the Commissioner is authorized to charge any fees associated with the filing of this Petition, excluding issue fees, to Account No. No. 50-3746.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	LEIMBACH ASSOCIATES		
Signature			
Printed name	James D. Leimbach		
Date	June 28, 2006	Reg. No.	34,374

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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

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In re Application of
Horst Rumpf et al.

Group Art Unit: 2655

Examiner: Jorge L. C. Ortiz

APPARATUS HAVING A
CONTROL CIRCUIT

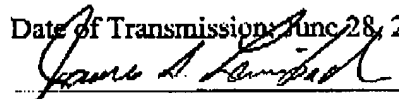
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Serial No. 09/854,393

Filed: May 11, 2001

Confirmation No. 8218

Date of Transmission: June 28, 2006



Name: James D. Leimbach
Registration No. 34,374

VIA FACSIMILE TRANSMISSION TO:
Chief Administrative Patent Judge
Honorable Commissioner of Patents and Trademarks
Alexandria VA, 22313-1450

Sir:

Petition to the Under 37 C.F.R. §1.181

This is a Petition to invoke the supervisory authority of the Director and
Designate a New Ground of Rejection for a pending appeal before the Board of Patent Appeals.

This petition seeks supervisory review and there should be no fee charged;
however, the Commissioner is hereby authorized to charge any fees associated with the filing of
this Petition, including extension fees but excluding issue fees, to Account No. 50-3745, and to
credit any overpayments to the same account.

Serial No. 09/854,393

The appellants have received and considered the Examiner's Answer that was mailed April 28, 2006. The appellants hereby petition the Director to designate a new ground of rejection has been made in a pending appeal before the Board of Patent Appeals and Interferences. The Examiner's Answer mailed on April 28, 2006 contained a new ground of rejection that was not designated as a new ground of rejection under 37 C.F.R. §41.39.

The rejection of appealed claims 1, 3, 5-9, 12-18 and 20 under the provisions of 35 U.S.C. §103(a) has been obvious over *Hsin et al.* in view of the admitted prior art of *Hsin et al.* The Examiner's Answer mailed on April 28, 2006 states on page 14 that "the examiner provided the Appellant with *extrinsic* evidence made of record, Japanese Publication Number: 62-229403, which teaches that a controller's parameters are adapted during operation." The appellant asserts that this is a new rejection that has not before been presented during the prosecution of this case.

The Final Office Action mailed June 29, 2005, in the first paragraph on page 15 contains a statement that the prior art made of record not relied upon but considered pertinent. The second paragraph on page 15 of the Final Office Action mailed June 29, 2005 contains a statement that Japanese Publication Number: 62-229403 teaches an apparatus having a control circuit and controller, characterized in that an adaptation of the parameters of the feed forward filter arrangement are adapted by an adaptation algorithm during operation. This mentioning of Japanese Publication Number: 62-229403 (along with numerous other references) is not part of any rejection involved in this appeal.

Therefore, the examiner's attempts within the Examiner's Answer to use Japanese Publication Number: 62-229403 creates a combination that the appellant has not had a fair opportunity to respond to. *Hsin et al.* do not mention Japanese Publication Number: 62-229403 and Japanese Publication Number: 62-229403 is not part of the admitted prior art to *Hsin et al.* The appellants request that the use of Japanese Publication Number: 62-229403 in the rejection of appealed claims 1, 3, 5-9, 12-18 and 20 under the provisions of 35 U.S.C. §103(a) has been obvious over *Hsin et al.* in view of the admitted prior art of *Hsin et al.* as done in the Examiner's Answer be designated as a new rejection under 37 C.F.R. §41.39.

Serial No. 09/854,393

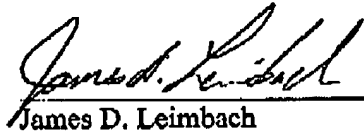
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Accordingly, the Examiner's Answer mailed on April 28, 2006 contains a new ground of rejection that was not designated as a new ground of rejection under 37 C.F.R. §41.39.

In summary, the Examiner's Answer contains a rejection that should be designated as a new rejection pursuant to 37 C.F.R. §41.39.

The appellants seek the supervisory review. Therefore, there is no fee due under 37 C.F.R. §41.20. If it is determined that a petition fee is due, the Commissioner is hereby authorized to charge any fees associated with the filing of this Petition, including extension fees but excluding issue fees, to Account No. 50-3745, and to credit any overpayments to the same account.

Respectfully submitted,


James D. Leimbach
Attorney for Appellants
Registration No. 34,374

Telephone: 585-381-9983
Facsimile: 585-381-9983

Serial No. 09/854,393